

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

FIRST CITY BANK OF FLORIDA,)	
)	
Plaintiff.)	
)	
v.)	CASE NO. 2:17-CV-41-WKW
)	[WO]
WILLIAM R. McKELVY, <i>et al.</i> ,)	
)	
Defendants.)	

ORDER

Before the court is the Joint Motion for Dismissal with Prejudice filed by Plaintiff First City Bank of Florida and Defendants BancorpSouth Bank (“BancorpSouth”) and Johnny Kinney. (Doc. # 119.) The motion is construed as a notice of dismissal pursuant to Rule 41(a)(1)(A)(i) of the Federal Rules of Civil Procedure.¹ Because the notice comports with Rule 41(a)(1)(A)(i), Plaintiff’s claims

¹ The parties filed a joint stipulation presumably pursuant to Rule 41(a)(1)(A)(ii). Rule 41(a)(1)(A)(ii) is not applicable because all the parties who have appeared in this action have not signed the stipulation of dismissal. *See* Fed. R. Civ. P. 41(a)(1)(A)(ii). However, Rule 41(a)(1)(A)(i) allows for a plaintiff to dismiss an action without a court order by filing a notice of dismissal before an opposing party serves either an answer or a motion for summary judgment. Fed. R. Civ. P. 41(a)(1)(A)(i). “Such a notice may be filed against one defendant without dismissing the entire action.” *Sears & Roebuck & Co. v. Hardin Constr. Grp., Inc.*, No. CV 16-00272-KD-B, 2016 WL 9343175, at *1 (S.D. Ala. Oct. 3, 2016) (citing *Klay v. United Healthgroup, Inc.*, 376 F.3d 1092, 1106 (11th Cir. 2004) (“Rule 41 allows a plaintiff to dismiss all of his claims against a particular defendant.”)). Here, neither Defendant above has filed an answer or a motion for summary judgment; hence, the notice of dismissal complies with Rule 41(a)(1)(A)(i).

against BancorpSouth and Mr. Kinsey have been dismissed with prejudice by operation of Rule 41(a)(1) on the terms set out in the notice.

The Clerk of the Court is DIRECTED to reflect in the court's electronic record that BancorpSouth Bank and Johnny Kinsey have been terminated as Defendants in this action.

It is further ORDERED that the pending motions filed by BancorpSouth and Mr. Kinsey (Docs. # 61, 63, 109) are DENIED as moot.

DONE this 5th day of December, 2017.

/s/ W. Keith Watkins
CHIEF UNITED STATES DISTRICT JUDGE